

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

injuries when the chair he was sitting in fell apart causing him to fall backward and strike the floor. He did not stop work. OWCP accepted the claim for lumbar sprain.

On July 30, 2014 appellant was seen at the Osceola Regional Medical Center by Dr. Judson Krosney, a specialist in emergency medicine, for acute exacerbation of back pain. Appellant filed a notice of recurrence of medical condition on August 24, 2014 for medical treatment only. OWCP received a July 3, 2002 magnetic resonance imaging (MRI) scan, on October 1, 2014, which was interpreted by Dr. Bruce A. Rodan, a Board-certified diagnostic radiologist, as revealing herniated discs at L4-5 and L5-S1.

On January 19, 2015 appellant filed a claim for a schedule award (Form CA-7).

By letter dated February 6, 2015, OWCP requested that appellant submit an impairment evaluation from his attending physician in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2009) (A.M.A., *Guides*).<sup>2</sup> It provided him 30 days to submit the requested impairment evaluation.

By letter dated March 6, 2015, appellant informed OWCP that his treating physician, Dr. Diego Guerrero Amponsah, Board-certified in pain medicine, declined to submit a report because he was not a specialist on matters related to the spine.

On July 28, 2015 OWCP referred appellant, a series of questions, a statement of accepted facts (SOAF), and the medical record to Dr. Richard C. Smith, a Board-certified orthopedic surgeon, for a second opinion examination and determination as to whether appellant sustained a permanent impairment and the date of maximum medical improvement (MMI).

Dr. Smith evaluated appellant on August 13, 2015 and provided detailed findings on physical examination, summary of past medical history, and review of diagnostic testing. He noted that a March 13, 2015 x-ray of the lumbar spine revealed no fracture and dislocation, joint spaces well preserved, and normal alignment. A 2002 MRI scan revealed herniated nucleus pulposus (HNP) at L4-5 and L5-S1 from a prior injury. Dr. Smith diagnosed lumbago and lumbar sprain.

In an August 19, 2015 supplemental report, Dr. Smith opined that appellant's accepted condition of lumbar strain did not qualify for an impairment rating in accordance with the sixth edition of the A.M.A., *Guides*. He noted that appellant had lumbar disc herniations at L4-5 and L5-S1 which predated his 2012 date of injury. Dr. Smith explained that appellant's neurologic examination revealed normal findings and thus, no impairment was warranted in this case.

By decision dated September 15, 2015, OWCP denied appellant's claim for a schedule award as the evidence was insufficient to establish a permanent impairment to a member or function of the body.

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<sup>2</sup> A.M.A., *Guides* (2009).

## **LEGAL PRECEDENT**

The schedule award provision of FECA and its implementing regulations set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of scheduled members or functions of the body.<sup>3</sup> However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>4</sup>

It is the claimant's burden to establish that he has sustained a permanent impairment of the scheduled member or function as a result of any employment injury.<sup>5</sup> OWCP procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of maximum medical improvement), describes the impairment in sufficient detail so that it can be visualized on review and computes the percentage of impairment in accordance with the A.M.A., *Guides*.<sup>6</sup>

Although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under FECA for injury to the spine.<sup>7</sup> In 1960, amendments to FECA modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Therefore, as the schedule award provisions of FECA include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.<sup>8</sup>

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment.<sup>9</sup> For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP procedures indicate that *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment using the sixth edition (July/August

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<sup>3</sup> 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

<sup>4</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); see also Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter, 2.808.5a (February 2013).

<sup>5</sup> *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>6</sup> *Supra* note 4, Part 2 at Chapter 2.808.5 (February 2013).

<sup>7</sup> *Pamela J. Darling*, 49 ECAB 286 (1998).

<sup>8</sup> *Thomas J. Engelhart*, 50 ECAB 319 (1999).

<sup>9</sup> *Supra* note 4 Part 3 at Chapter 3.700, Exhibit 4 (January 2010).

2009) is to be applied.<sup>10</sup> FECA approved methodology is premised on evidence of radiculopathy affecting the upper and/or lower extremities.<sup>11</sup>

### ANALYSIS

OWCP accepted appellant's claim for sprain of lumbar back. The Board notes that a schedule award is not payable under FECA for injury to the spine<sup>12</sup> or based on whole person impairment.<sup>13</sup> However, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.<sup>14</sup> Appellant must establish impairment to a scheduled member caused by the accepted condition before impairment due to a preexisting condition can be assessed.<sup>15</sup> The instant record fails to establish that appellant has any impairment caused by his accepted sprain of lumbar spine.

In his August 19, 2015 report, Dr. Smith opined that appellant's accepted condition of lumbar strain did not qualify for an impairment rating in accordance with the sixth edition of the A.M.A., *Guides*. He noted that appellant had lumbar disc herniations at L4-5 and L5-S1 which predated his 2012 date of accident. Dr. Smith explained that appellant's neurologic examination revealed normal findings and thus, no schedule award for permanent impairment was warranted in this case.

The Board finds that Dr. Smith properly concluded that appellant had no permanent impairment to a member or function of the body. Dr. Smith provided a well-reasoned report based on a proper factual and medical history and included detailed findings and rationale supporting his opinion. The August 13, 2015 examination performed revealed normal sensory and motor findings in both lower extremities.<sup>16</sup> As previously noted, FECA does not allow for permanent partial impairment ratings of the back without evidence of extremity impairment.<sup>17</sup> Thus, the record does not provide any medical opinion finding that appellant sustained permanent impairment of the lower extremities as a result of his employment injury.<sup>18</sup> The Board finds that OWCP properly denied his claim for a schedule award.

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<sup>10</sup> See *G.N.*, Docket No. 10-850 (issued November 12, 2010); see also *id.* at Chapter 3.700, Exhibit 1, note 5 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

<sup>11</sup> *Supra* note 6 at Chapter 2.808.5(c)(3) (February 2013).

<sup>12</sup> *Pamela J. Darling*, 49 ECAB 286 (1998).

<sup>13</sup> *N.M.*, 58 ECAB 273 (2007).

<sup>14</sup> *Thomas J. Engelhart*, 50 ECAB 319 (1999).

<sup>15</sup> See generally *Thomas P. Lavin*, 57 ECAB 353 (2006).

<sup>16</sup> *L.W.*, Docket No. 12-1613 (issued February 19, 2013).

<sup>17</sup> *Supra* note 11.

<sup>18</sup> *E.D.*, Docket No. 10-967 (issued January 7, 2011).

It is appellant's burden of proof to establish a permanent impairment of a scheduled member as a result of an employment injury.<sup>19</sup> The medical evidence must include a description of any physical impairment in sufficient detail so that the claims examiner and others reviewing the file would be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>20</sup> Appellant did not submit such evidence and thus, he did not meet his burden of proof to establish a schedule award claim.<sup>21</sup>

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish entitlement to a schedule award for permanent impairment of a scheduled member, due to his work-related injury.

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<sup>19</sup> See *supra* note 5.

<sup>20</sup> See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

<sup>21</sup> *V.W.*, Docket No. 09-2026 (issued February 16, 2010); *L.F.*, Docket No. 10-343 (issued November 29, 2010).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated September 15, 2015 is affirmed.

Issued: March 10, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board